

E-Filing

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 Microsoft Corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

GOOGLE, INC. and KAI-FU LEE,

Plaintiffs,

v.

MICROSOFT CORPORATION, and DOES 1
 through 20, inclusive,

Defendants.

Case No.

05 3095

NOTICE OF PENDENCY OF OTHER
 ACTION (Pursuant to Civil L.R. 3-13)

Pursuant to Civil Local Rule 3-13, defendant Microsoft Corporation ("Microsoft"), notifies the Court of the related action, *Microsoft Corporation v. Kai-Fu Lee and Google, Inc.*, pending in the Superior Court of Washington, King County, Case Number 05-2-23561-6. ("Microsoft's Complaint"). Microsoft's Complaint against Kai-Fu Lee and Google Inc. (collectively "Defendants") was commenced on July 18, 2005. Microsoft's Complaint alleges that Defendants have breached the same covenant not to compete at issue in the action filed by Defendants. Microsoft also alleges causes of action against Defendants for misappropriation of trade secrets, and tortious interference with contractual relations. A true and correct copy of Microsoft's Complaint is attached hereto as Exhibit A.

On July, 27 2005, Microsoft moved for a Temporary Restraining Order and Order to Show Cause prohibiting Defendants from further breaching the covenant not to compete also at issue in this action. On July 28, 2005, the Superior Court of Washington granted in part Microsoft's

1 Temporary Restraining Order and Order to Show Cause. A true and correct copy of the Court's
2 Order is attached here to as Exhibit B.

3 In order to avoid conflicts, conserve resources and promote an efficient determination of this
4 action, Microsoft believes that these cases should be coordinated to avoid conflicting judgments, and
5 that the Court should either dismiss this action or stay the proceedings pending the outcome of the
6 already advanced Washington State Court action.

7
8 DATED: July 29, 2005

PRESTON GATES & ELLIS LLP

9
10 By 

11 Lisa Marie Schull
12 Attorneys for Defendant
13 MICROSOFT CORPORATION
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

KAI-FU LEE and GOOGLE INC., a
Delaware corporation,

Defendants.

No. 2 • 235 61 - 6 SEA
COMPLAINT

Plaintiff Microsoft Corporation ("Microsoft") is suing defendants Kai-Fu Lee ("Lee") and Google Inc. ("Google") because Lee is breaking contractual promises to Microsoft, and Google is intentionally assisting Lee. Microsoft hired Lee as a Vice President almost five years ago, and has richly rewarded him for the fine work he has performed on behalf of the company. As a condition of becoming an executive at Microsoft, Lee agreed to certain contractual provisions, including a limited non-compete agreement, aimed at protecting Microsoft's confidential, proprietary and trade secret information. During his tenure as a Vice President at Microsoft, Lee lead the development of certain proprietary search technologies, including Microsoft technologies that directly compete with substantially similar services offered by Google. In addition,

COMPLAINT - 1

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COPY

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1 Lee is one of the main architects of Microsoft's business strategies in China. By virtue of
2 his position, Lee was afforded access to highly confidential, proprietary and trade secret
3 technological data and business plans regarding Microsoft's search strategies and business
4 plans for China. Lee recently announced that he is leaving Microsoft to join Google to
5 become the head of Google's new office in China. Accepting such a position with a direct
6 Microsoft competitor like Google, violates the narrow non-competition promise Lee made
7 when he was hired as an executive. It may also violate, or threatens to violate, Lee's other
8 contractual obligations, such as his promises to maintain in strict confidence Microsoft
9 confidential, proprietary and trade secret information. Google is fully aware of Lee's
10 promises to Microsoft, but has chosen to ignore them, and has encouraged Lee to violate
11 them.

12 I. PARTIES

13 1. Microsoft is a Washington corporation with its principal place of business
14 in Redmond, Washington.

15 2. Lee is a resident of Bellevue, Washington. Lee held the position of Vice
16 President at Microsoft for most of the last five years. For at least the last three years, Lee
17 has worked in Microsoft's Natural Interactive Services Division. His duties included
18 managing the creation of new search technologies and methodologies for Microsoft.
19 Search technologies and innovations developed by Lee are utilized throughout Microsoft,
20 and incorporated into products and services that directly compete with Google. In
21 addition, throughout his career at Microsoft, Lee has held leadership roles with respect to
22 Microsoft's strategies for doing business in China.

23 3. Google is a Delaware corporation with its principal place of business in
24 California. Google maintains an office in Kirkland, Washington and does business
25 throughout the State of Washington. Google purports to have the world's largest internet
search engine. Google profits from this search engine by selling advertising targeted at

1 consumers that use the free service. Microsoft's MSN search engine is one of Google's
2 major competitors. Google has also developed software that allows consumers to search
3 their personal computers. When consumers have this software and run this kind of search
4 on their personal computers, the Google product returns results both from the hard drive
5 of the personal computer and from the internet. The MSN division of Microsoft offers a
6 similar desktop search service. The MSN service was recently developed by Lee's group
7 at Microsoft.

8 II. JURISDICTION AND VENUE

9 4. This is an action for monetary damages and injunctive relief arising out of
10 Defendant Lee's breach of his written employment agreement(s) with Microsoft, in which
11 he promised (a) to devote his entire working time, abilities, and efforts to Microsoft in
12 furtherance of Microsoft's best interests and to refrain from engaging in other activities
13 that may conflict with Microsoft's business interests; (b) never to disclose Microsoft's
14 confidential and proprietary information and trade secrets to others outside of Microsoft;
15 (c) never to use such confidential and proprietary information or trade secrets for any
16 purpose other than his work for Microsoft; (d) not to solicit or induce other Microsoft
17 employees to leave Microsoft and work for other companies; and (e) for a period of one
18 year following termination of his employment, not to compete with Microsoft in certain,
19 defined ways or provide services to any other person or entity that competes with
20 Microsoft in certain, defined ways. Defendant Lee has either actually breached or
21 threatened to breach one or more of these promises.

22 5. This Court has jurisdiction over the action pursuant to RCW § 2.08.010.
23 Defendant Google is subject to the jurisdiction of this Court because it does business and
24 maintain offices in Washington. Defendant Lee is subjected to the jurisdiction of this
25 Court because his agreement with Microsoft was entered into in Washington and because
he has expressly consented to the jurisdiction of this Court. Venue is proper in this Court

1 pursuant to the express terms of the agreement between Microsoft and Lee and RCW §
2 4.12.025.

3 III. FACTS

4 6. On August 8, 2000, Lee entered into an Employee Agreement
5 ("Agreement") with Microsoft. Microsoft required Lee to enter into this Agreement as a
6 condition of his employment by Microsoft and in conjunction with his promotion to the
7 position of Vice President. In return for entering into the Agreement, Lee received
8 substantial compensation and benefits.

9 7. Paragraph 1 of the Agreement provides, in relevant part:

10 1. Best Efforts/Conflicting Interest/Moonlighting. I will
11 diligently perform my assigned duties and devote my entire
12 working time, abilities and efforts to such duties and to furthering
13 the best interests of Microsoft. During my employment, I will not
14 engage in any activity or investment that (a) conflicts with
15 Microsoft's business interests, (b) occupies my attention so as to
16 interfere with the proper and efficient performance of my duties for
17 Microsoft, or (c) interferes with the independent exercise of my
18 judgment in Microsoft's best interest. . . .

16 8. Paragraph 3 of the Agreement provides, in relevant part:

17 3. Non-Disclosure. During my employment and at all times
18 thereafter, I will neither disclose to anyone outside Microsoft nor
19 use for any purpose other than my work at Microsoft . . . any
20 confidential or proprietary information or trade secrets of
21 Microsoft or its subsidiaries "Confidential or proprietary
22 information or trade secrets" means all data and information in
23 whatever form, tangible or intangible, that is not generally known
24 to the public and that relates to the business, technology, practices,
25 products, marketing, sales, services, finances, or legal affairs of
Microsoft . . . , including without limitation: information about
actual or prospective customers, suppliers and business partners;
business, sales, marketing, technical, financial and legal plans,
proposals and projections; concepts, techniques, processes,
methods, systems, designs, programs, code, formulas, research,
experimental work and work in progress.

9. Paragraph 9 of the Agreement provides, in relevant part:

1 **9. Non-Competition and Non-Solicitation.** While employed at
 2 Microsoft and for a period of one year thereafter, I will not (a)
 3 accept employment or engage in activities competitive with
 4 product, services or projects (including actual or demonstrably
 5 anticipated research or development) on which I worked or about
 6 which I learned confidential or proprietary information or trade
 7 secrets while employed at Microsoft; (b) render services to any
 8 client or customer of Microsoft for which I performed services
 9 during the twelve months prior to leaving Microsoft's employ; (c)
 10 induce, attempt to induce, or assist another to induce or attempt to
 11 induce any person to terminate his employment with Microsoft or
 12 to work for me or for any other person or entity. If during or after
 13 my employment with Microsoft I seek work elsewhere, I will
 14 provide a copy of this Agreement to any persons or entities by
 15 whom I am seeking to be hired before accepting employment with
 16 or engagement by them.

17 10. Paragraphs 12 and 13 of the Agreement provide, in relevant part:

18 **12. Equitable Relief.** I acknowledge that any violation of this
 19 Agreement by me will cause irreparable injury to Microsoft and
 20 shall entitle Microsoft to extraordinary relief in court, including but
 21 not limited to temporary restraining orders and preliminary and
 22 permanent injunctions, without the necessity of posting bond or
 23 security.

24 **13. Non-Waiver and Attorneys' Fees.** . . . If court proceedings
 25 are brought to enforce or interpret any provision of this
 26 Agreement, the prevailing party shall be entitled to an award of
 27 reasonable and necessary expenses of litigation, including
 28 reasonable attorneys' fees.

29 11. Paragraph 14 of the Agreement provides, in relevant part:

30 I agree that . . . exclusive venue and exclusive personal jurisdiction
 31 for any action arising out of this Agreement shall lie in state or
 32 federal court located in King County, Washington. . . . The terms
 33 and conditions of this Agreement shall survive termination of my
 34 employment.

35 12. Lee worked as a Vice President for Microsoft beginning in August 2000.

For the last several years he has worked in Microsoft's Natural Interactive Services
 Division. Although Lee has worked on several technologies during his employment with
 Microsoft, search technologies were a primary focus. For example, at one point Lee was

1 responsible for the overall development of the MSN internet search application. Lee
2 subsequently led the development of search technologies and applications that ultimately
3 became the recently released MSN desktop search service. Over the past several years,
4 Lee and his team have contributed significantly to the development of MSN's new
5 internet search service that was just released this year. All of these search technologies
6 and services compete directly with substantially similar technologies and services offered
7 by Google.

8 13. As a result of his leadership role with respect to the development of various
9 Microsoft search technologies, Lee was privy to confidential and proprietary information
10 and trade secrets related to search strategies, architecture of search engines, natural
11 language advancements for search engines and algorithms designed to improve search
12 engines and search results. In addition, Lee learned of Microsoft's confidential and
13 proprietary plans to monetize the search technologies it developed.

14 14. In addition to his leadership role with respect to search technologies, Lee
15 was one of the lead executives in charge of developing and implementing Microsoft's
16 business strategies with respect to China. Prior to joining Microsoft Corporation, Lee
17 worked for an affiliate company in China where he was in charge of Microsoft's China
18 research laboratory. Since his return, Lee has continued to lead on issues related to China.
19 As a result, he has had access to confidential and proprietary information and trade secrets
20 related to Microsoft's overall China business strategy, Microsoft's target areas for
21 expansion, Microsoft's plans for gaining market share with respect to internet search in
22 China, and Microsoft's key employees, partners and contacts in China.

23 15. In addition, Lee has been exposed to a great deal of other high level
24 company strategic information by virtue of his executive status with the company. Lee
25 regularly received "executive only" confidential business plans and strategies, and

1 regularly attended "executive only" meetings wherein these confidential business plans
2 and strategies were discussed.

3 16. On July 5, 2005, Lee informed the head of his department, Eric Rudder,
4 that he did not plan to return from sabbatical. Lee stated he had contacted Google
5 regarding employment six weeks before leaving for sabbatical, and had spoken with
6 Google attorneys, whom he said warned him Microsoft would become angry and escort
7 him off the premises when he admitted he had spoken with them. Lee stated Google
8 offered him the opportunity to build and lead its China office "end to end." Were Lee to
9 accept such a role, he would necessarily work on Google search technologies that directly
10 compete with the search technologies he helped develop for Microsoft. In addition, were
11 he to accept the position with Google, he would necessarily be helping Google compete
12 against Microsoft's business strategies for China -- strategies that he helped develop on
13 behalf of Microsoft.

14 17. Prior to offering Lee the position in China, Google was well aware of the
15 fact that every Microsoft employee is required to execute an Employee Agreement that
16 contains restrictions similar to those found in Lee's Employee Agreement. Nevertheless,
17 simultaneously with the service of this Complaint on Lee, Microsoft specifically informed
18 Google of Lee's Employee Agreement and provided it with a copy of that Agreement.

19 18. Although Google is aware that employing Lee as the head of its China
20 operations will cause Lee to breach his contractual obligations to Microsoft, Google has
21 wrongfully continued to employ Lee, and thus intentionally interfered with Microsoft's
22 contractual rights, and put at risk Microsoft's confidential, proprietary and trade secret
23 information.

24 19. The information Lee obtained and had access to while employed at
25 Microsoft—including, but not limited to, confidential search plans and technologies,
confidential plans to compete with Google and confidential plans for Microsoft's business

1 strategies in China---were considered and treated as confidential and proprietary by
 2 Microsoft and constitutes Microsoft's proprietary trade secrets. For example, the search
 3 engine source code and architectural plans are maintained by Microsoft in a manner to
 4 ensure that they are accessed only by individuals who have expressly agreed to maintain
 5 them as confidential. Moreover, the confidential business plans and strategies regarding
 6 China are accessible only by a select number of Microsoft employees. Access to such
 7 confidential and proprietary information would be strategically and economically
 8 advantageous to any company or individual seeking to compete with Microsoft such as
 9 Google. Lee's intimate knowledge of such confidential and proprietary information
 10 would undoubtedly be beneficial to him and Google, in competing with Microsoft.

11 20. Lee's current and threatened continuing violations of the Agreement have
 12 caused and will continue to cause irreparable harm to Microsoft.

13 IV. COUNT I: BREACH OF CONTRACT

14 21. Microsoft incorporates the allegations of Paragraphs 1 through 20 as
 15 though fully set forth herein.

16 22. Lee entered into a valid and binding agreement with Microsoft in which he
 17 promised that he would not, for a period of one year following termination of his
 18 employment with Microsoft, compete with Microsoft in certain, defined ways or provide
 19 services to any other person or entity that competes with Microsoft in certain, defined
 20 ways---i.e., he would not accept employment or engage in activities competitive with
 21 products, services or projects (including actual or demonstrably anticipated research or
 22 development) on which he worked or about which he learned confidential or proprietary
 23 information or trade secrets while employed at Microsoft.

24 23. Lee received adequate consideration to support the Agreement.

24. Lee breached the Agreement by accepting employment with Google, which competes with Microsoft in the provision on search services worldwide and specifically in the China market.

V. COUNT II: BREACH OF NON-DISCLOSURE PROMISES AND MISAPPROPRIATION OF TRADE SECRETS

25. Microsoft incorporates the allegations of Paragraphs 1 through 24 as though fully set forth herein.

26. While an employee of Microsoft, Lee was privy to sensitive, privileged, confidential, and proprietary information that constitutes trade secrets of Microsoft.

27. Based on information and belief, Lee's conduct threatens to disclose or Lee inevitably will disclose Microsoft's trade secrets to Google and/or others for his and/or Google's financial gain in the course of working to improve Google search products that compete with Microsoft, and in the course of establishing and building Google's presence in China to compete with Microsoft's efforts in China. Such actions by Lee violates the non-disclosure provisions of the Agreement.

28. Moreover, the conduct of Lee and Google constitutes threatened misappropriation of trade secrets in violation of RCW 19.108 et seq.

29. Defendants' threatened misappropriation of Microsoft's trade secrets is causing and, if not enjoined, will continue to cause substantial and irreparable injury and damages to Microsoft.

VI. COUNT III: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

30. Microsoft incorporates the allegations of Paragraphs 1 through 29 as though fully set forth herein.

31. Microsoft has a valid contract with Lee which, amongst other things, prohibits Lee from working for a competitor like Google for a period of one year after leaving Microsoft.

VIII. PRAYER FOR RELIEF

(v) Enjoins Lee, or Google on Lee's behalf, from soliciting, encouraging, or attempting to induce employees of

1 Microsoft or its subsidiaries to terminate their employment and go
2 to work for any other entity, including Google; and

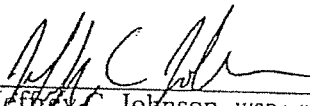
3 B. Compensatory damages in an amount to be determined at trial;

4 C. An award of Microsoft's attorneys' fees and costs incurred pursuant to the
5 Agreement; and

6 D. Such further relief as the Court deems just and equitable.
7

8 DATED this 18th day of July, 2005.
9

10 PRESTON GATES & ELLIS LLP

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12 By 
13 Jeffrey C. Johnson, WSBA # 23066
14 Attorneys for Plaintiff
15 Microsoft Corporation
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Judge Steven González

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

DR KAI-FU LEE and GOOGLE INC , a
Delaware corporation,

Defendants.

No. 05-2-23561-6 SEA

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER

THIS MATTER came on for hearing before this Court upon Plaintiff's Motion for a Temporary Restraining Order. Defendants Dr. Kai-Fu Lee and Google Inc. were provided with formal notice of this hearing.

Having considered Plaintiff's motion and all pleadings submitted in support of and in opposition to the motion, including three documents submitted by Plaintiff and reviewed in-camera¹, as well as the arguments of counsel for the parties, the Court is satisfied that Plaintiff has established a clear legal or equitable right; a well-grounded fear

¹ Plaintiff has requested that the three documents be maintained under seal as it would be untenable to be required to disclose confidential or proprietary information or trade secrets in order to protect them. Plaintiff must file a motion to seal the documents setting forth the basis for the request. Defendant has not objected to the documents being filed under seal. Due to the pressing nature of this action, the court has reserved ruling on this request in order to provide third parties the opportunity to be heard. The court anticipates ruling on the motion to seal the three documents pursuant to the *Ishikawa* factors on or before August 2, 2005.

1 of immediate invasion of that right and that the acts complained of will result in actual and
2 substantial injury to Plaintiff; and that the equities dictate that a temporary restraining
3 order, in substantially the form requested, should be entered. Now, therefore, it is hereby

4 **ORDERED** that, pending the below-scheduled hearing (even if such hearing is
5 continued), Defendants Dr. Kai-Fu Lee and Google Inc. are hereby temporarily restrained
6 and enjoined as follows:

- 7 1) Defendant Dr. Lee is enjoined from accepting employment
8 competitive with or engaging in any activities competitive with
9 any product, service or project (including actual or demonstrably
10 anticipated research or development) on which he worked while
11 employed at Microsoft, including but not limited to accepting
12 employment or engaging in activities related to (a) computer
13 search technologies, including but not limited to internet search
14 engines, desktop search technologies and any other search
15 technologies, (b) natural language processing or speech
16 technologies, or (c) business strategies, planning, or development
17 with respect to the Chinese market for computer search
18 technologies;
- 19 2) Defendant Google Inc. is enjoined from employing Dr. Lee for or
20 otherwise engaging him in any activities competitive with any
21 product, service or project (including actual or demonstrably
22 anticipated research or development) on which he worked while
23 employed at Microsoft, including but not limited to accepting
24 employment or engaging in activities related to (a) computer
25 search technologies, including but not limited to internet search
engines, desktop search technologies and any other search
technologies, (b) natural language processing or speech
technologies, or (c) business strategies, planning, or development
with respect to the Chinese market for computer search
technologies;
- 3) Defendants Dr. Lee and Google Inc., or any person or entity acting
in concert with either of them, are enjoined from disclosing or
misappropriating for their own use or benefit, any trade secrets or
other confidential or proprietary information of Microsoft obtained
in connection with Dr. Lee's work for Plaintiff. "Confidential or
proprietary information or trade secrets" means all data and
information in whatever form, tangible or intangible, that is not
generally known to the public and that relates to the business,

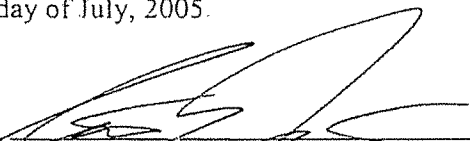
1 technology, practices, products, marketing, sales, services,
 2 finances, or legal affairs of Microsoft , including without
 3 limitation: information about actual or prospective customers,
 4 suppliers and business partners; business, sales, marketing,
 5 technical, financial and legal plans, proposals and projections;
 6 concepts, techniques, processes, methods, systems, designs,
 7 programs, code, formulas, research, experimental work and work
 8 in progress;

- 9 4) Defendant Dr. Lee is enjoined from soliciting, encouraging, or
 10 attempting to induce employees of Microsoft or its subsidiaries to
 11 terminate their employment to work for any other entity, including
 12 Google Inc ;
- 13 5) Defendants are required to return to Plaintiff's counsel within 24
 14 hours all property, documents, files, reports, and/or other materials,
 15 if any, that Defendants have in their possession, custody, or control
 16 that were obtained from Plaintiff in connection with Dr. Lee's
 17 work for Plaintiff; and
- 18 6) Plaintiff and Defendants are enjoined from destroying any
 19 documents or files of any kind, whether in written or electronic
 20 form, that relate in any way to Microsoft and Google Inc.'s
 21 employment of Dr. Lee.

22 **IT IS FURTHER ORDERED** that Plaintiff shall post security in the amount of
 23 \$1,000,000.00 for the payment of Defendants' costs and damages that may be incurred in
 24 the event Defendants are found to be wrongfully enjoined or restrained by this order, and
 25 such security shall be posted not later than August 2, 2005.

IT IS FURTHER ORDERED that Defendants shall appear before Judge Steven
 González of the King County Superior Court on the 6th day of September, 2005, at 9:00
a.m., to show cause, if any, why a preliminary injunction should not be entered for the
 pendency of this lawsuit including, but not limited to, the relief set forth above

DONE IN OPEN COURT this 28th day of July, 2005.


 JUDGE STEVEN GONZALEZ

PROOF OF SERVICE

I, Karen Stilber, declare as follows:

I am a citizen of the United States and a resident of the County of San Francisco; I am over the age of 18 years and am not a party to the within action or proceeding. I am employed by the law firm of Preston Gates & Ellis LLP, located at 55 Second Street, Suite 1700, San Francisco, California 94105.

On July 29, 2005, I served the foregoing documents described as:

NOTICE OF PENDENCY OF OTHER ACTION

on the interested parties in this action by placing a true copy thereof enclosed in an envelope addressed as follows:

Stephen E. Taylor
Taylor & Company Law Offices, Inc.
One Ferry Building, Suite 355
San Francisco, CA 94111

Attorneys for Plaintiffs Google, Inc. and Kai-Fu Lee

[XX] **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on July 29, 2005, at San Francisco, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


KAREN STILBER